

B 104
(Rev. 2/92)

ADVERSARY PROCEEDING COVER SHEET

(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER
(Court Use Only)

PLAINTIFFS

ERIC TIRADO DASTAS

DEFENDANTS

CITIBANK N.A.

ATTORNEYS (Firm Name, Address, and Telephone No.)

Rafael Torres Alicea (787-752-0101)
Town Park E-2 Santiam, San Juan PR 00924

ATTORNEYS (If Known)

Jorge E. Martinez Landrau
P.O. Box 192938
San Juan PR 00919-2938

PARTY (Check one box only)

☐ 1 U.S. PLAINTIFF☐ 2 U.S. DEFENDANT☒ 3 U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Request for reinstate of Stay Order (by injunction)

NATURE OF SUIT

(Check the one most appropriate box only.)

☐ 454 To Recover Money or Property☐ 455 To revoke an order of confirmation
of a Chap. 11, Chap. 12, or Chap. 13 Plan☐ 456 To obtain a declaratory judgment
relating to any of foregoing causes
of action☐ 435 To Determine Validity, Priority, or
Extent of a Lien or Other Interest in
Property☐ 426 To determine the dischargeability
of a debt 11 U.S.C. §523☐ 459 To determine a claim or cause of
action removed to a bankruptcy
court☐ 457 To obtain approval for the sale of
both the interest of the estate and
of a co-owner in property☒ 434 To obtain an injunction or other
equitable relief☐ 498 Other (specify)☐ 424 To object to or revoke a discharge
11 U.S.C. §727☐ 458 To subordinate any allowed claim
or interest except where such
subordination is provided in a planORIGIN OF
PROCEEDINGS

(Check one box only.)

☒ 1 Original
Proceeding☐ 2 Removed
Proceeding☐ 4 Reinstated
or Reopened☐ 5 Transferred
from Another
Bankruptcy
Court☐ CHECK IF THIS IS A CLASS
ACTION UNDER F.R.C.P. 23

DEMAND

NEAREST THOUSAND

\$

OTHER RELIEF SOUGHT

☐ JURY
DEMAND

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR

ERIC TIRADO DASTAS

BANKRUPTCY CASE NO.

04-00370 GAC

DISTRICT IN WHICH CASE IS PENDING

Puerto Rico

DIVISIONAL OFFICE

NAME OF JUDGE

Hon. Gerardo Carlo

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF

DEFENDANT

ADVERSARY PROCEEDING NO.

DISTRICT

DIVISIONAL OFFICE

NAME OF JUDGE

FILING
FEE

(Check one box only.)

☐ FEE ATTACHED☒ FEE NOT REQUIRED☐ FEE IS DEFERRED

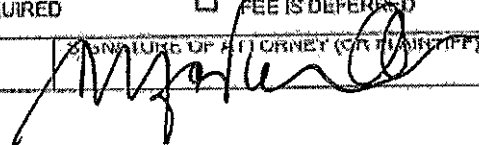
DATE

04-04-06

PRINT NAME

Rafael Torres Alicea

SIGNATURE OF ATTORNEY (OR PLAINTIFF)

U.S. DISTRICT COURT
FOR THE DISTRICT OF
PUERTO RICO
2006 APR -4 PM 3:44
CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

ERIC DOEL TIRADO DASTAS
Debtor

ERIC DOEL TIRADO DASTAS
Plaintiff

CITIBANK, N.A.
Defendants

JOSÉ CARRIÓN MORALES, Chapter 13
Trustee

CASE NO.: 04-00370 (GAC)

CHAPTER 13

ADV. NO. []

Injunction to reinstate
the order stay

2006 APR -4 PM 3:44
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF
PUERTO RICO

COMPLAINT

TO THE HONORABLE COURT:

Comes now debtor-plaintiff ERIC DOEL TIRADO DASTAS, through the undersigned counsel and respectfully avers and prays:

I. JURISDICTION OF THIS COURT

Jurisdiction is invoked under 28 United States Code §157 (a) (b) (1), 28 U.S.C. §§157 (b) (2) (E), (b) (2) (K) and §1334. This proceeding is a core proceeding.

II. VENUE

Venue is proper in this District Court under 28 U.S.C. §1408 §§1409, inasmuch as all the events or omissions giving rise to the claim of the captioned case occurred within the territory of this jurisdictional district.

III. PARTIES

1. Eric Doel Tirado Dastas, herein after PLAINTIFF, is the debtor in a Chapter 13 case under the Bankruptcy Code, case number 04-00370 (GAC).

2. Citibank, N.A., hereinafter referred to as "Citibank" is a corporation duly organized under the laws of the Commonwealth of Puerto Rico.
3. Mr. José Carrión Morales is brought as the Chapter 13 Trustee in this case.

IV. FACTS

4. This bankruptcy petition was filed on 01-20-2004.
5. Citibank filed its Proof of Claim for \$153,430.59 and arrears of \$9653.65, under POC # 2.
6. The Chapter 13 Plan [E.O.D. # 55] provides for the payment of the arrears claimed by Citibank (\$9653.65).
7. On 12-28-04 Citibank filed a motion under §362, seeking the lift of the stay as to its account for arrears on the direct post petition payments on the mortgage [E.O.D #49A].
8. A stipulation was entered [E.O.D. #56A] and approved.
9. Thereafter, the debtor plaintiff, due to variation in income, became in arrears on the stipulation and the stay was lifted.
10. Citibank then moved the local court in order to conclude the foreclosure procedure, in the case Citibank, N.A., v. Eric Doel Tirado Dastas, Civil No. KCD04-0005(501), Superior Court of Puerto Rico, San Juan Part.
11. That the auction has been scheduled for April 10, 2006 at 9:30 a.m.. Copy of the auction publication is attached (in the Spanish language, and will be translated if necessary).

12. The debtor is depositing the amount of \$23,000.00 which represents approximately the unaccepted amount of the mortgage payments.

V. SPECIFIC ALLEGATIONS

13. That this property represents regular income to the debtor and it provides part of the funding of the plan.

14. Also, the property is the debtor residence.

15. That the debtor is providing adequate protection to Citibank due to the following:

- I. The deposit of the funds in the amount of \$23,000.00, in a separate motion filed jointly, for its application to the post-petition payments if our prayer is granted.

- II. The value of the property (\$166,000. as of the filing date) is enough to cover Citibank's claim.

16. That the debtor-paintiff request that the stay order be reinstate, allowing the payment trough the Chapter 13 Trustee the arrearage amount and the continuing of the direct post petition payments, pursuing the request for the modification of the plan to be filed in the bankruptcy case.

THEREFORE, it is respectfully prayed that:

- I. Temporary restraining order be issued for the stay of the auction scheduled for April 10, 2006;

II. A permanent injunction order be issued for the restating of the stay order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 4 day of April 2006.

A handwritten signature in black ink, appearing to read 'Rafael Torres Alicea', is written over the printed name and address.

Rafael Torres Alicea (206414)

Town Park, Santiam E-2

San Juan, PR 00924

Tel. 752-0101/Fax 276-7836

E-mail: ramfis@caribe.net

Attorney for Debtor

7/general/04-00370/mcs(22-25)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

ERIC DOEL TIRADO DASTAS
Debtor

ERIC DOEL TIRADO DASTAS
Plaintiff

CITIBANK, N.A.
Defendants

JOSÉ CARRIÓN MORALES, Chapter 13
Trustee

CASE NO.: 04-00370 (GAC)

CHAPTER 13

ADV. NO. 05

Injunction to reinstate
the order stay

VERIFIED STATEMENT UNDER PENALTY OF PERJURY

I, Eric Doel Tirado Dastas, of legal age, single, and resident of San Juan, Puerto Rico, freely and voluntarily declare under penalty of perjury:

1. That I am the debtor and plaintiff in the above captioned bankruptcy proceedings.
2. That I have read and have received explanation about the contents of the draft of a complaint to be filed in my name against Citibank, N.A., to reinstate the automatic stay order.
3. That I have personal knowledge of the events described and alleged in the complaint, and that they are true and correct to the best of my knowledge, information and belief.
4. That I understand what perjury is, and that I am fully aware of the criminal implications that perjury entails.

5. That the preceding averments are true, and that I knowingly make this statement out of my own free will, to be used in support of the complaint, in support of any request for injunctive relief, or as otherwise needed to prosecute the cause of action against the parties therein named as defendants.

In San Juan, Puerto Rico, this 4th day of April, 2006.


ERIC DOEL TIRADO DASTAS